

Missouri Attorney General's Opinions - 2007

Opinion	Date	Topic	Summary
60-2007	Feb 6	DISABLED PERSONS. LICENSE TAGS- PLATES. PHYSICIANS AND SURGEONS.	A doctor who determines that a patient is “physically disabled” under Section 301.132.1(4) does not violate Section 301.142.27, unless the diagnosis is outside the doctor's scope of practice or there is no basis for the diagnosis.
75-2007	Feb 9	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article I, Sections 26 and 28 of the Constitution of Missouri, relating to eminent domain.
76-2007	Feb 9	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article VI, Section 21 of the Constitution of Missouri, relating to reclamation of blighted, substandard, or insanitary areas.
80-2007	Mar 2	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition to adopt an amendment to Article VI, Section 21 of the Constitution of Missouri relating to the reclamation of blighted, substandard, or insanitary areas.
81-2007	Mar 2	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition to adopt an amendment to Article I, Sections 26 and 28 of the Constitution of Missouri relating to eminent domain.
82-2007	Mar 5	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a proposed constitutional amendment to amend Article I, Sections 26 and 28 relating to eminent domain.
83-2007	Mar 5	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a proposed constitutional amendment to amend Article VI, Section 21 relating to eminent domain.
87-2007	Oct 4	POLITICAL SUBDIVISIONS. STATE AUDITOR.	A county health center, if it is established pursuant to Section 205.042 and has the authority to set its own tax levy, is a "political subdivision" and would therefore be subject to a state audit when requested by petition pursuant to Section 29.230.2. Other county health centers, SB 40 boards, E911 boards, community mental health centers, and senior

			services boards, however, do not meet the characteristics of "political subdivisions" for purposes of that statute.
92-2007	Apr 19	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article X of the Constitution of Missouri relating to taxation.
93-2007	Apr 26	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Chapter 311, RSMo, relating to the sale, purchase, and possession of alcoholic beverages.
94-2007	Oct 4	FIRE PROTECTION DISTRICTS.	The Board of Directors of the Boone County Fire Protection District may not delegate, by resolution, the authority to hire or terminate employees and/or volunteers of the Fire Protection District. Section 321.015 does not prohibit a retired State of Missouri employee who receives more than \$75 per day in retirement income from the State of Missouri from serving on the board of directors of a fire protection district in the State of Missouri.
96-2007	May 9	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding an initiative petition to adopt an amendment to Article X of the Constitution of Missouri relating to taxation.
97-2007	May 9	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition to adopt an amendment to Article X of the Constitution of Missouri relating to taxation.
99-2007	May 17	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding an initiative petition to amend Chapter 311, RSMo, to change the legal age for the sale, purchase, and possession of alcohol to 18 years.
100-2007	May 17	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition to amend Chapter 311, RSMo, to change the legal age for the sale, purchase, and possession of alcohol to 18 years.
102-2007	June 1	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition (third submittal) to amend Chapter 311, RSMo, relating to the sale, purchase, and possession of alcoholic beverages.
105-2007	June 12	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000,

			regarding an initiative petition (third submittal) to amend Chapter 311, RSMo, relating to the sale, purchase, and possession of alcoholic beverages.
107-2007	June 12	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition (third submittal) to amend Chapter 311, RSMo, relating to the sale, purchase, and possession of alcoholic beverages.
110-2007	June 20	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition (second submittal) to amend Article I of the Constitution of Missouri relating to civil rights.
111-2007	June 25	BALLOTS. INITIATIVE AND REFERENDUM. REFERENDUM.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment passed by the Missouri General Assembly (House Joint Resolution No. 7) relating to English as the official state language.
113-2007	July 5	INITIATIVE AND REFERENDUM. REFERENDUM.	Review and approval of a summary statement prepared pursuant to Section 116.160, RSMo, concerning House Joint Resolution No. 7 with respect to English as the official state language.
114-2007	July 5	BALLOTS. FAIR BALLOT LANGUAGE.	Review and approval of a fair ballot language statement prepared pursuant to Section 116.025, RSMo, concerning House Joint Resolution No. 7 with respect to English as the official state language.
117-2007	July 11	INITIATIVE PETITION. INITIATIVES.	Review and approval of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for an initiative petition to amend Article I, Section 34 of the Missouri Constitution.
118-2007	July 13	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition regarding a proposed constitutional amendment to Article I, Section 34.
122-2007	July 18	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Section 3, Article VIII of the Missouri Constitution relating to paper ballots.
126-2007	Aug 7	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Section 3, Article VIII of the Missouri Constitution relating to paper ballots (second submittal).
127-2007	Aug 22	INITIATIVE PETITION. INITIATIVES.	Review and approval of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for an initiative petition to amend Article VIII, Section 3 of the Missouri Constitution relating to paper ballots.
129-2007	Aug 24	INITIATIVE PETITION.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal

		INITIATIVES.	note and fiscal note summary for an initiative petition regarding a proposed constitutional amendment to Article VIII, Section 3 relating to paper ballots.
133-2007	Sept 13	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article III of the Missouri Constitution relating to cloning.
134-2007	Oct 5	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition regarding a proposed constitutional amendment to Article III, Section 38(e) relating to cloning.
135-2007	Oct 5	INITIATIVE PETITION. INITIATIVES.	Review and approval of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for an initiative petition to amend Article III, Section 38(e) of the Missouri Constitution relating cloning.
138-2007	Oct 12	INITIATIVE PETITION. INITIATIVES.	Review and rejection of the sufficiency as to form of an initiative petition pertaining to the Missouri Division of Fire Safety.
139-2007	Nov 2	INITIATIVE PETITION. INITIATIVES.	Review and rejection of the sufficiency as to form of an initiative petition to amend Title XXXVI of the Revised Statutes of Missouri.
142-2007	Nov 15	INITIATIVE PETITION. INITIATIVES.	Review and approval of the sufficiency as to form of an initiative petition to amend Title XXXVI of the Revised Statutes of Missouri.
143-2007	Nov 29	INITIATIVE PETITION. INITIATIVES.	Review and approval of the sufficiency as to form of an initiative petition to amend Chapter 208, RSMo, by adding four new sections to be known as the Missouri Healthcare Restoration Act.
144-2007	Dec 6	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition regarding a proposed new chapter to Title XXXVI of the Revised Statutes of Missouri relating to abortions.
146-2007	Dec 6	INITIATIVE PETITION. INITIATIVES.	Review and approval of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for an initiative petition regarding a proposed new chapter to Title XXXVI of the Revised Statutes of Missouri relating to abortions.
149-2007	Dec 14	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.175, RSMo, of the fiscal note and fiscal note summary for an initiative petition submitted by Robin Acree amending Chapter 208 of the Revised Statutes of Missouri relating to healthcare.
152-2007	Dec 18	INITIATIVE PETITION. INITIATIVES.	Review and approval of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for an initiative petition regarding a proposal to amend Chapter 208 of the Revised Statutes of Missouri.
154-2007	Jan 3	INITIATIVE PETITION.	Review and approval of the sufficiency as to form of an initiative

	2008	INITIATIVES.	petition to amend various chapters of the Revised Statutes of Missouri.
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DISABLED PERSONS;
LICENSE TAGS—PLATES:
PHYSICIANS AND SURGEONS:

A doctor who determines that a patient is “physically disabled” under Section 301.132.1(4) does not violate Section 301.142.27, unless the diagnosis is outside the doctor’s scope of practice or there is no basis for the diagnosis.

OPINION NO. 60-2007

February 6, 2007

Honorable Margaret Donnelly
State Representative, District 73
State Capitol Building, Room 101-H
Jefferson City, MO 65101

Dear Representative Donnelly:

You have submitted the following question to this office for response:

Does a doctor who, in good faith, determines that a patient is “physically disabled” pursuant to Section 301.142.1(4) violate Section 301.142.27 when he or she is diagnosing a patient within the scope of his or her practice?

Section 301.142, RSMo [L.2006, H.B. No. 1762, § A.]¹ establishes the procedures and requirements for issuing and obtaining disabled license plates and windshield placards. Sections 301.142.7 and 301.142.10 provide that physically disabled persons, as defined in Section 301.142.1(4), and certain others, may obtain disabled license plates and placards. Applications for disabled plates and placards must be made to the director of revenue, and must be accompanied by a statement, signed by a licensed physician or other authorized health care practitioner as defined in Section 301.142.1, which certifies that the applicant, user, or member of the applicant’s household is a physically disabled person as defined in Section 301.142.1(4).

¹All references to Section 301.142, RSMo, and its subsections are to this version.

Section 301.142.27 imposes criminal liability for certain violations of Section 301.142:²

Fraudulent application, renewal, issuance, procurement or use of disabled person license plates or windshield placards shall be a class A misdemeanor. It is a class B misdemeanor for a physician, chiropractor, podiatrist or optometrist to certify that an individual or family member is qualified for a license plate or windshield placard based on a disability, the diagnosis of which is outside their scope of practice or if there is no basis for the diagnosis.

When a statute is unambiguous, there is no need to resort to rules of statutory construction. *Kerperien v. Lumberman's Mut. Cas. Co.*, 100 S.W.3d 778 (Mo. banc 2003). Section 301.142.27 is unambiguous as to the circumstances under which a physician, chiropractor, podiatrist, or optometrist (hereinafter "Provider") commits a class B misdemeanor under that section. A Provider commits a class B misdemeanor under that section when the Provider (1) certifies that an individual or family member is qualified for a license plate or windshield placard based on a disability and (2) the diagnosis of that disability is outside their scope of practice,³ or there is no basis for the diagnosis.

Thus, if:

²Section 301.141, RSMo Cum. Supp. 2005, also imposes criminal liability for certain violations of Section 301.142 by physicians and "other authorized healthcare practitioners" which, under Section 301.142.1(3), now include advanced practice registered nurses licensed under Chapter 335, RSMo. However, the criminal liability imposed by Section 301.141, RSMo Cum. Supp. 2005, with respect to physicians and other authorized healthcare practitioners, is the same as the criminal liability imposed by Section 301.142.

³The scopes of practice of Providers are discussed in the Missouri statutes. The practice of medicine by physicians in Missouri is regulated by Chapter 334, RSMo. The practice of chiropractic in Missouri is regulated by Chapter 330, RSMo, and is defined in Section 331.010, RSMo Cum. Supp. 2005. The practice of podiatry in Missouri is regulated by Chapter 330, RSMo, and "podiatrist" is defined in Section 330.010.2, RSMo Cum. Supp. 2005. The practice of optometry in Missouri is regulated by Chapter 336, RSMo, and is defined in Section 336.010, RSMo 2000.

- a Provider diagnoses a patient within his or her respective scope of practice as physically disabled;
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- the Provider certifies that the patient or member of the patient's household is qualified for a license plate or windshield placard based on that disability; and
-
- there is a basis for the diagnosis of that disability;

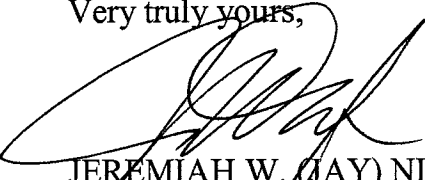
the Provider does not violate Section 301.142.27.

In the event that the basis for a Provider's diagnosis is questioned with respect to Section 301.142, Section 301.142.5 offers Providers some guidance as to what documentation may help establish that there is a basis for the Provider's diagnosis. Section 301.142.5 requires a physician to maintain, in the disabled person's chart, "sufficient documentation so as to objectively confirm" that the diagnosis or condition that qualified the person as disabled under Section 301.142.1 exists.

CONCLUSION

A doctor who determines that a patient is "physically disabled" under Section 301.142.1(4) does not violate Section 301.142.27, unless the diagnosis is outside the doctor's scope of practice or there is no basis for the diagnosis.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

February 9, 2007

OPINION LETTER NO. 75-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated February 1, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article I, Sections 26 and 28 of the Constitution of Missouri, relating to eminent domain.

We approve the petition as to form. But Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a large, stylized oval flourish.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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ATTORNEY GENERAL

P.O. Box 899
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February 9, 2007

OPINION LETTER NO. 76-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated February 1, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article VI, Section 21 of the Constitution of Missouri, relating to reclamation of blighted, substandard, or insanitary areas.

We approve the petition as to form. But Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jeremiah W. Nixon", written over a large, stylized circular flourish.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
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March 2, 2007

OPINION LETTER NO. 80-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol Building, Room 121
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of February 21, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Ron Calzone, to adopt an amendment to Article VI, Section 21 of the Constitution of Missouri. The fiscal note summary that you submitted is as follows:

The total cost or savings to state or local governmental entities cannot be known. Some state governmental entities estimate no related costs, however, certain state governmental entities may have unknown or indirect costs. Estimated costs to local governmental entities will vary, but could be significant.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", is written over a large, stylized, cursive flourish.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

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March 2, 2007

OPINION LETTER NO. 81-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol Building, Room 121
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of February 21, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Ron Calzone, to adopt an amendment to Article I, Sections 26 and 28 of the Constitution of Missouri, relating to eminent domain. The fiscal note summary that you submitted is as follows:

The total cost or savings to state or local governmental entities cannot be known. Some state governmental entities estimate no related costs, however, certain state governmental entities may have unknown or indirect costs that may exceed \$100,000. Estimated costs to local governmental entities will vary, but could be significant.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
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March 5, 2007

OPINION NO. 82-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of March 2, 2007, submitting to us a revised summary statement prepared under Section 116.334, RSMo, for a constitutional amendment submitted by Ron Calzone to amend Article I, Sections 26 and 28 relating to eminent domain. The proposed summary statement is as follows:

Shall the Missouri Constitution be amended to restrict the use of eminent domain by:

- Allowing only government entities to use eminent domain;
- Prohibiting its use for private purposes, with certain exceptions for utilities;
- Requiring that any taking of property be necessary for a public use and that landowners receive just compensation;
- Requiring that the intended public use be declared at the time of the taking and permitting the original owners to repurchase the property if it is not so used within five years or if the property is offered for sale within 20 years?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we

Honorable Robin Carnahan

Page 2

March 5, 2007

take with respect to such review should be construed as an endorsement of the resolution, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", with a large, stylized initial "J" and "N".

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

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March 5, 2007

OPINION NO. 83-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of March 2, 2007, submitting to us a revised summary statement prepared under Section 116.334, RSMo, for a constitutional amendment submitted by Ron Calzone to amend Article VI, Section 21 relating to eminent domain. The proposed summary statement is as follows:

Shall the Missouri Constitution be amended to change the power of the General Assembly and constitutionally chartered cities or counties to:

- Prohibit the use of eminent domain to acquire and resell property found to be blighted, substandard or unsanitary for the purpose of clearance, redevelopment or rehabilitation; and
- Allow them to require owners of property found to be a public nuisance to abate or clean up the nuisance and, if the property owner fails to do so in a reasonable time, allow the local government to pay for the abatement and impose a lien to recover the cost?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the resolution, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

POLITICAL SUBDIVISIONS:
STATE AUDITOR:

A county health center, if it is established pursuant to Section 205.042 and has the authority to set its own tax levy, is a "political subdivision" and would therefore be subject to a state audit when requested by petition pursuant to Section 29.230.2. Other county health centers, SB 40 boards, E911 boards, community mental health centers and senior services boards, however, do not meet the characteristics of "political subdivisions" for purposes of that statute.

OPINION NO. 87-2007

October 4, 2007

Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 121
Jefferson City, Missouri 65101

Dear Ms. Montee:

You have submitted a request to this office for an opinion in response to the following question:

Are any of these entities political subdivisions for the purpose of Section 29.230.2 RSMo: county health centers, SB 40 boards, E911 boards, community mental health centers, or senior services boards?

We understand that the purpose of your question is to determine whether these entities should be audited on a regular basis, along with other county offices, in accordance with Section 29.230.1; or only upon receipt of a petition of the voters in accordance with Section 29.230.2.

REVIEW OF LAW

The State Auditor's statutory authority to perform audits, generally, is found in Chapter 29.¹ Section 29.230 directs the State Auditor to conduct audits in two distinct circumstances:

(1) The Auditor shall conduct audits of the various county officers in counties with unelected county auditors at least once during the county officer's term. Section 29.230.1.

¹All statutory citations are to RSMo 2000 unless otherwise specified.

(2) The State Auditor shall audit any political subdivision of the state when requested to do so by a petition signed by the appropriate number of voters. Section 29.230.2.

Article IV, Section 13 of the Missouri Constitution provides that the State Auditor must “establish appropriate systems of accounting for the political subdivisions of the state.” But neither Article IV nor Chapter 29 defines the term “political subdivision.”² Thus, we must resort to principles of statutory construction to find the appropriate definition for the term as used in Section 29.230. One such principle is that:

When the legislature enacts a statute referring to a term which it does not define and which has [other] judicial or common law meaning attached to it, the legislature is presumed to have acted with knowledge of that meaning.

State v. Harris, 156 S.W.3d 817, 823 (Mo.App. W.D. 2005), citing *PharmFlex, Inc. v. Div. of Employment Sec.*, 964 S.W.2d 825, 830 (Mo.App. W.D. 1997). However, a review of Missouri constitutional and statutory law reveals many uses of the term “political subdivision” with various meanings. The Missouri Supreme Court has acknowledged that the numerous provisions make it difficult to formulate one all-encompassing definition: in *State v. Hodge*, 841 S.W.2d 658, 659 (Mo. banc 1992), the Court concluded that “no universal definition of ‘political subdivision’ exists.” An entity may be a political subdivision for purposes of one law, but not for another.

As we review the law, we note initially that Article X, § 15 of the Missouri Constitution, which relates to taxation, states that:

The term “other political subdivision,” as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax.³

²The one reported case construing the term for purposes of Section 29.230, *Consol. School Dist. No. 1 of Jackson County v. Bond*, 500 S.W.2d 18 (Mo.App. K.C.D. 1973), decided that a school district was a political subdivision for purposes of the statute, but did not otherwise discuss the characteristics of a political subdivision.

³For other provisions relating to taxation, see also, Section 70.120(3) (defining “political subdivision” for purposes of municipal contracts); Section 105.145.1(2) (requiring political subdivisions to make annual reports to the state auditor); and Section 70.600(19) (including in the definition of “political subdivision”: (1) government subdivisions that have

Other provisions do not specifically mention taxation. For example, Section 251.020, which relates to economic development, defines “political subdivisions” as “counties, townships, cities, towns, villages, whether or not incorporated, . . . and any other local public body created by the general assembly or exercising governmental functions.”⁴

In a case involving the campaign finance disclosure law, the Missouri Court of Appeals also noted the lack of uniform definition and referred to the Black’s Law Dictionary definition, which describes a “political subdivision” as:

[a] division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public.

Guy v. City of St. Louis, 829 S.W.2d 66, 68 (Mo.App. E.D. 1992), *quoting* Black’s Law Dictionary 1159 (6th ed. 1990). That court also noted the contextual nature of the definition:

In other contexts, a “political subdivision” has been defined to mean: “any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied,” § 70.120(3) RSMo 1986; “a county, city, town, village, or township of a township organization county,” § 115.013(18) RSMo 1986; “any agency or unit of this state empowered by law to maintain a law enforcement agency,” § 70.815.1(2) RSMo (Supp.1991); and “any county, city, town, village, or other political entity having the authority to tax and to exercise the power of eminent domain,” § 305.120 RSMo (Supp.1991).

the power to tax, except for school districts; (2) certain boards of utilities and public works; (3) joint municipal utility commissions).

⁴For other provisions that do not relate to taxation, *see also*, Section 44.010 (defining political subdivision narrowly in the context of civil defense); Section 536.200.1 (requiring state agencies to prepare fiscal notes when political subdivisions are impacted); Section 67.750(7) (defining “political subdivision” for purposes of Chapter 67); Section 115.013(19) (providing a definition of “political subdivision” for Missouri election law); Section 105.300(8) (relating to the employment of public employees); Section 105.450(8) (defining “political subdivision” broadly with regard to conflict-of-interest laws for public employees).

Guy v. City of St. Louis, 829 S.W.2d 66 at 68-69.

Thus, in addressing the question of whether specific county entities are subject to audit under Section 29.230.2, we must consider the context of the statute, as well as the authorities that define the term “political subdivision” under Missouri law. When we do so, we conclude that the most appropriate distinguishing characteristic of a political subdivision for the purposes of Section 29.230 is the power to tax.

We noted earlier that Article X, § 15 explicitly defines political subdivisions as those entities “having the power to tax.” This provision was added to the Missouri Constitution in 1945, as was Article IV, § 13, prescribing that the State Auditor must “establish appropriate systems of accounting for the political subdivisions of the state.” Section 29.230 was also amended that year by Senate Bill 311.⁵ Section 21 of that bill expanded the State Auditor’s duty beyond state and county supported entities to include the broader category of “political subdivisions” for the first time.

We do not consider Article X, § 15 to be in *pari materia* with Article IV, § 13 and Section 29.230. “In *pari materia*” means “upon the same matter or subject.” Black’s Law Dictionary 791 (6th ed.1990). However, in keeping with the tenet that the legislature is presumed to act with knowledge of the meaning of a word in other contexts, we find it strongly suggestive that the term “political subdivision,” defined in and added to Article X, § 15 in 1945, was added to Article IV, § 13 and Section 29.230 in the same year. In addition, Section 105.145, which requires political subdivisions to remit copies of their annual financial reports to the State Auditor, defines “political subdivision” as “any agency or unit of this state, except counties and school districts, which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.” That statute, even though found in a different chapter and enacted at a different time, may be fairly considered in *pari materia* with § 29.230, as both relate to the State Auditor:

Statutes are considered to be *in pari materia* when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object. Norman J. Singer, *Statutes and Statutory Construction* section 51.03 (6th ed.2000). The doctrine of *in pari materia* requires that statutes relating to the same subject matter be construed together even though the statutes are found in different chapters and were enacted at different times.

⁵SB 311, § 21, 584 Laws of 1945 at 588.

State v. Goebel, 83 S.W.3d 639, 645 (Mo.App. E.D. 2002). See also *Crum v. Mo. Dir. of Revenue*, 455 F.Supp.2d 978 (W.D. Mo. 2006) (reading Sections 324.010 and 334.100 in pari materia because both relate to when and how a physician's license can be revoked, despite being enacted at different times).

Thus, we believe the single most appropriate distinguishing characteristic of a political subdivision for the purposes of Section 29.230 is the power to tax, and we analyze the entities about which you inquired in light of that conclusion. However, we also note that several of the entities about which you inquired have significant fiscal and managerial autonomy, separate from their local counties. Our opinion that they are not political subdivisions for purposes of Section 29.230 should not be read to derogate that autonomy or be projected to other statutes.

LEGAL ANALYSIS

The various county entities you have inquired about are as follows:

1. County Health Centers

County health centers are created pursuant to Sections 205.010 *et seq.*, for the “improvement of health of all inhabitants of [the] county or counties.” Section 205.050. Chapter 205 does not define county health centers as political subdivisions.

County health centers are created by a petition of voters, or by a majority vote of the county commissions in certain counties. Section 205.010.⁶ After the initial vote of the people for a tax on assessed valuation to support the county health center, the trustees “shall determine annually the rate of the tax levy[.]”

We have issued several opinions on county health centers in the past. In Opinion No. 224, Lehr (1975), we concluded that the State Auditor was obligated to include county hospitals in the scope of county audits under Section 29.230.1. In Opinion No. 53, Wilson (1991), we concluded that the Boone County Hospital was not a political subdivision separate from Boone County, and that the county should pay the cost of a petition audit of the hospital. In Opinion No. 83, Staples (1988), we concluded that a county health center could not independently provide for the pensioning of its officers and employees under the Missouri Local Government Employees’ Retirement System (LAGERS) because it was a part of the county rather than a separate political

⁶RSMo Supp. 2006.

subdivision. These opinions consistently concluded that county health centers were part of the county government rather than separate political subdivisions.

However, we believe that conclusion must be revised in light of *State ex rel. Bd. of Health Center Trustees of Clay County v. County Comm'n of Clay County*, 896 S.W.2d 627 (Mo. banc 1995). In that case, the Missouri Supreme Court discussed at some length the question of whether county health centers are political subdivisions. The issue arose when Clay County disputed the annual tax levy rate submitted by the Clay County Health Center. *Id.* The Court ultimately found that the Clay County Health Center had the authority to set its own tax rate. *Id.* at 631.

The Court noted that Section 205.141 gave the county commission the power to levy a tax to support a county health center, and Section 205.042.8 gave the board of health center trustees the power to determine the rate of the tax levy. The Court found that the two statutes applied to two different types of county health centers: those that are “established as a department of county government. . . . [and] completely controlled by county government,” with no independent autonomous control over its budget, personnel, or sources of funding, and those that are “established by a vote of the people and . . . governed by an independent board.” *Id.* at 630. The Court described the latter type of county health center thusly:

This type of operation is separate from the county commission regarding budgeting and taxing issues; such entity merely submits the budgets and levies to the commission for the commission to certify . . . The commission’s action of certifying the levy is a ministerial function not involving discretion.

Id.

The Court further noted that the county health center’s power to tax was authorized by Article X, § 15 of the Missouri Constitution. By implication, therefore, it was a political subdivision for purposes of that provision.

We believe the Court’s opinion is controlling authority on the question of whether a county health center established under Section 205.042, with the power to set its own tax levy, is a political subdivision and thus governs the State Auditor’s authority to audit the county health center as well. If the county health center is established and fully supported by the county government, and does not set its own tax rate, it should not be

considered a “political subdivision” for purposes of Section 29.230.2. But the county health centers that are established by petition and operate autonomously should be so considered, based on their independent power to levy a tax and their fiscal independence. Accordingly, we withdraw Opinion No. 224-1975 insofar as it relates to the latter type of county health center, and we withdraw Opinion No. 83-1988 and Opinion No. 53-1991 in their entirety.

2. SB 40 Boards

SB 40 boards are established in Sections 205.968 *et seq.*, to administer sheltered workshop programs and facilities. The boards are considered “political subdivisions” only for the narrow purposes of Sections 70.600 to 70.755.⁷

SB 40 boards are created when a majority of voters approve a tax levy based on assessed valuation. Section 205.971. The Supreme Court has issued an opinion relating to SB 40 boards and the power to tax. In *State ex rel. Indus. Serv. Contractors, Inc. v. County Comm’n of Johnson County*, 918 S.W.2d 252 (Mo. banc 1996), the Johnson County SB 40 board asserted that it had the authority to set tax levy increases, not the county commission. The Court found that although SB 40 boards do have exclusive administrative control of sheltered facilities, “it does not necessarily follow that the general assembly vested the board with the power to . . . tax.” *Id.* at 256. Not only is the county commission given the taxing authority, “nothing in the language of the statute logically implies that [the county commission is] obligated to levy only that amount of tax the board determines is necessary.” *Id.*

Industrial Services Contractors makes it clear that SB 40 boards do not have their own authority to tax or set a tax levy. We believe they should not be considered political subdivisions for purposes of Section 29.230.2.

3. E911 Boards

E911 boards are established in Sections 190.335 *et seq.*⁸ The boards administer a county sales tax that provides for the central dispatch of fire protection, law enforcement and ambulance services. Section 190.335.1. Chapter 190 does not identify E911 boards as “political subdivisions.”

⁷Relating to LAGERS.

⁸RSMo Supp. 2006.

An E911 board is created when a ballot proposal is approved by a majority of county voters.⁹ The E911 board is primarily authorized to purchase and maintain emergency equipment for centralized dispatching (Section 190.335.1) and funding for these duties comes from a retail sales tax (Section 190.335.4). Each year, the county commission¹⁰ is required to establish the tax rate, which is not to exceed the rate approved by voters. Section 190.335.7.

In an opinion issued in 2000, we noted “[t]he power to tax for a county or a political subdivision must be based upon specific or clearly implied authority from the general assembly.” Opinion No. 208-2000, Spencer, *citing State ex rel. Goldberg v. Barber & Sons Tobacco, Inc.*, 649 S.W.2d 859 (Mo. banc 1983). In the case of E911 boards, the power to tax has been specifically conveyed to the county commission. *Id.*

E911 boards do not have their own taxing authority. We conclude they are not “political subdivisions” subject to audit under Section 29.230.2. This conclusion would apply also to “Emergency Telephone Service 911 Boards” established pursuant to Sections 190.309 *et seq.*, as they also lack the power to set their own tax rate.

4. Community Mental Health Centers

Community mental health centers are established in Sections 205.975 *et seq.*, and are to provide “comprehensive mental health services . . . to individuals residing in a certain service area.” Section 205.975(2). Chapter 205 does not identify community mental health centers as political subdivisions.

Community mental health center boards are established through a series of steps. First, the Department of Mental Health must create mental health service areas, which may contain one or more counties. Section 205.976. Second, if a county has one or more service area, it may put a community mental health center tax levy on the ballot. Section 205.977. The levy is an assessed valuation on property, to be collected along with other county funds. Section 205.980.1. Finally, if approved, the community mental health

⁹The county commission first submits a proposed E911 board to voters; if residents present a petition back to the commission requesting the E911 board, the commission will then place it on the ballot. Section 190.335.2.

¹⁰Section 190.335.7 states that the “governing body” sets the rate; “governing body” is defined in Section 190.300 as the “legislative body for a city, county or city not within a county.”

center board of trustees is then appointed by the county commission or commissions in the mental health service area. Section 205.984.1.

Although the community mental health center board of trustees decides how tax levy funds shall be spent, Section 205.980.2, it does not have the power to tax or cause taxes to be levied. The board may "request" that the governing body of the county or counties submit a tax vote to the people. Section 205.979.1. The governing body of the county "shall levy and collect the tax" when it is approved. Section 205.980.1. Section 205.975(7) defines "participating counties" as those which "choose to appropriate funds from their general tax revenues or levy and collect special taxes to support" a community mental health center. There is no language similar to the grant of authority in Section 205.042.8 for the county health centers, specifically conferring the right to determine the rate of their tax levy. We conclude that the power to levy the tax to support the community health center resides in the governing body of the county or counties in the service area.

In Opinion No. 41-1980, Lampo, we opined that a community mental health center board of trustees does not have the power to issue tax anticipation notes or hold title to real property. However, third class county courts may do both on behalf of community mental health centers in those counties. *Id.* This opinion is consistent with the absence of a statutory grant of taxing authority to the community mental health center board. We conclude that community mental health centers are not "political subdivisions" for purposes of Section 29.230.2.

5. Senior Services Boards

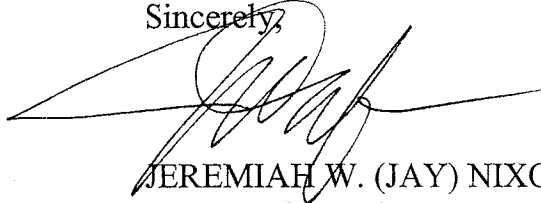
Senior services boards are established in Sections 67.990 *et seq.*, "to provide programs which will improve the health, nutrition and quality of life of persons who are sixty years of age or older." Section 67.993.3. While nothing in Chapter 67 specifically defines senior services boards as "political subdivisions," Chapter 67 is entitled "Political Subdivisions, Miscellaneous Powers."

A senior services board of directors is created first with the approval of a senior citizens' services fund tax, based on assessed valuation. Section 67.990.1. The senior services board does not have clear taxing power; to infer so would be to assume an authority that the legislature did not necessarily confer. *See* Opinion No. 208-2000, Spencer. We find that senior services boards are not "political subdivisions" within the meaning of Section 29.230.2, and are therefore not subject to audit under that subsection.

CONCLUSION

A county health center, if it is established pursuant to Section 205.042 and has the authority to set its own tax levy, is a "political subdivision" and would therefore be subject to a state audit when requested by petition pursuant to Section 29.230.2. Other county health centers, SB 40 boards, E911 boards, community mental health centers, and senior services boards, however, do not meet the characteristics of "political subdivisions" for purposes of that statute.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. (Jay) Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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P.O. Box 899
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April 19, 2007

OPINION LETTER NO. 92-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated April 12, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article X of the Constitution of Missouri, relating to taxation.

We approve the petition as to form. But Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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April 26, 2007

OPINION LETTER NO. 93-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated April 18, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Chapter 311 of the Revised Statutes of Missouri, relating to the sale, purchase, and possession of alcoholic beverages.

We approve the petition as to form, but Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

FIRE PROTECTION DISTRICTS: The Board of Directors of the Boone County Fire Protection District may not delegate, by resolution, the authority to hire or terminate employees and/or volunteers of the Fire Protection District. Section 321.015 does not prohibit a retired State of Missouri employee who receives more than \$75 per day in retirement income from the State of Missouri from serving on the board of directors of a fire protection district in the State of Missouri.

OPINION NO. 94-2007

October 4, 2007

The Honorable Jeff Harris
State Representative, District 23
Room 204, State Capitol Building
Jefferson City, MO 65101

Dear Representative Harris:

You have submitted the following questions to this office for response:

- 1) In reference to RSMo §321.200, §321.220 and §321.600.9, can the Board of Directors of the Boone County Fire Protection District delegate, by resolution, the authority to hire or terminate employees and/or volunteers of the Fire Protection District?
- 2) Does the language of RSMo §321.015 prohibit a retired State of Missouri employee who receives more than seventy five dollars per day in retirement income from the State of Missouri from serving on the Board of Directors of a Fire Protection District in the State of Missouri?

(1) Section 321.220(9), RSMo. Supp. 2006, empowers the district, and the board on its behalf, to “hire and retain agents, employees, engineers and attorneys, including part-time or volunteer firemen[.]” Section 321.200.1¹ provides, in pertinent part, that “[t]he board, acting as a board, shall exercise all powers of the board, without delegation thereof to

¹Statutory references are to the Revised Statutes of Missouri, 2000, unless otherwise noted.

any other governmental or other body or entity or association, and without delegation thereof to less than a quorum of the board.”

Opinion No. 96-92, Lang (August 26, 1992), addressed whether the Board of Regents of Central Missouri State University could delegate to the President of the University the authority to appoint, reappoint, and discharge full-time or part-time faculty of the institution. Section 174.120, RSMo 1986, said that “the board shall possess full power and authority to . . . appoint and dismiss all officers and teachers. . . .” Section 174.090, RSMo 1986, provided that:

A majority of the members of the board shall constitute a quorum for the transaction of business, but no appropriation of money nor any contract which shall require any appropriation or disbursement of money, shall be made, nor teacher employed or dismissed, unless a majority of all the members of the board vote for the same.

Based on these statutes, as well as Section 174.150, RSMo 1986, which provided that before any professor or teacher could be removed, “he shall have an opportunity to make a defense before the board[,]” it was the opinion of this office that the board could not delegate to the president the authority to appoint or dismiss faculty.

The statutes that govern fire protection district boards now and those that governed the board of Central Missouri State University in 1992 are similar in this respect: They indicate that in exercising certain of their powers, the boards must not delegate their authority, but must themselves act.

Section 321.200.1 prohibits the board of a fire protection district from delegating its powers to “any other governmental or other body or entity or association, . . . [or] less than a quorum of the board.” It does not expressly prohibit the board from delegating its powers to an employee of the fire protection district. But we do not believe it is logical to read such an exception into the broad prohibition against the district delegating its powers as the primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in a statute in their plain and ordinary meaning. *Wolff Shoe Co. v. Dir. of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988). Thus, we conclude that the Board may not delegate by resolution the authority to hire and fire employees or volunteers.

(2) Section 321.015 reads as follows:

No person holding any lucrative office or employment under this state, or any political subdivision thereof as defined in section 70.120, RSMo, shall hold the office of fire protection district director under this chapter. When any fire protection district director accepts any office or employment under this state or any political subdivision thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary or expenses as fire protection district director. This section shall not apply to members of the organized militia, of the reserve corps, public school employees and notaries public, or to fire protection districts located wholly within counties of the second, third or fourth class or located within first class counties not adjoining any other first class county, nor shall this section apply to any county of the first or second class not having more than nine hundred thousand inhabitants which borders any three first class counties; nor shall this section apply to any first class county without a charter form of government which adjoins both a first class county with a charter form of government with at least nine hundred thousand inhabitants, and adjoins at least four other counties. The term **“lucrative office or employment”** does not include receiving retirement benefits, compensation for expenses, or a stipend or per diem, in an amount not to exceed seventy-five dollars for each day of service, for service rendered to a fire protection district, the state or any political subdivision thereof.

The construction of the last sentence of the statute is at issue. In brief, the question is: does the exemption from the general prohibition against holding “lucrative office or employment” and holding the office of fire protection district director apply to anyone receiving retirement benefits from a political subdivision, or only those receiving retirement benefits in an amount equivalent to less than \$75 per day?

Section 321.015 has withstood an equal protection challenge. *State ex inf. Gavin v. Gill*, 688 S.W.2d 370 (Mo. banc 1985). However, it has not otherwise been construed, and we have found no case construing the term “lucrative office or employment” with respect to retirement benefits. To the extent possible, we again consider the plain and ordinary meaning of the words of the statute in order to ascertain the legislature’s intent. However, where an ambiguity exists, we may resort to canons of construction. *State v. Meggs*, 950 S.W.2d 608, 611 (Mo.App. S.D. 1997). Ambiguities in statutes imposing qualifications for

office are to be resolved in favor of eligibility. 67 C.J.S. *Officers* § 11 (1950), cited in *State ex rel. Burke v. Campbell*, 542 S.W.2d 355, 359 (Mo.App. St.L.D. 1976) (McMillian, J., dissenting). “The construction of statutes is not to be hyper-technical, but instead is to be ‘reasonable and logical and [to] give meaning to the statutes.’” *State ex rel. Rhodes v. Crouch*, 621 S.W.2d 47, 49 (Mo. banc 1981), quoted in *Lewis v. Gibbons*, 80 S.W.3d 461, 467 (Mo. banc 2002). At times those two canons have worked at cross-purposes, as in *Lewis v. Gibbons*, in which the majority found the most reasonable construction of the statutory restriction disqualified the candidate (Wolff, J. dissenting). In the instant case, however, they do not.

The use of the disjunctive “or” in Section 321.015 before the phrase “stipend or per diem” indicates an alternative that usually corresponds to the word “either,” *State ex rel. Pub. Counsel v. Pub. Ser. Comm’n*, 210 S.W.3d 344, 354 (Mo.App. W.D. 2006), suggesting that “stipend or per diem” are items of a type set apart from “retirement benefits or compensation for expenses.” Webster’s II New College Dictionary (2001) defines a “stipend” as “a regular fixed payment, as a salary or an allowance,” and a “per diem” as “an allowance for daily expenses.” The definitions imply that stipends and per diems are amounts paid for current service. By contrast, retirement benefits are paid for past service.

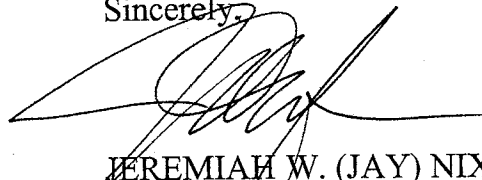
In *Gavin v. Gill*, the court surmised that the purpose of the restrictions set forth in Section 321.015 was to prevent a conflict of interest on the part of one who might be an employee of one political subdivision and the member of the governing board of another. *Id.* at 372. It likewise surmised that the legislature might have concluded that the exceptions for part-time or public school employees were appropriate as they would be more isolated from the normal course of political activity so that the possibility of conflict of interest was minimal. If the purpose of the restrictions is to minimize conflict of interest, it makes little sense to distinguish between those persons whose retirement benefits exceed \$75 per day and those whose retirement benefits fall under that amount. It is more logical to distinguish between those who receive compensation for current service such as a stipend or per diem, and those who receive payments for past service such as retirement benefits. The latter are less likely to promote a sense of current obligation on the part of the recipient. Thus, we conclude that the \$75 per day ceiling in the statute does not apply to retirement benefits.

CONCLUSION

(1) The Board of Directors of the Boone County Fire Protection District may not delegate, by resolution, the authority to hire or terminate employees and/or volunteers of the Fire Protection District.

(2) Section 321.015 does not prohibit a retired State of Missouri employee who receives more than \$75 per day in retirement income from the State of Missouri from serving on the board of directors of a fire protection district in the State of Missouri.

Sincerely,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

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May 9, 2007

OPINION LETTER NO. 96-2007

The Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of April 30, 2007, submitting a summary statement prepared under Section 116.334, RSMo, for an initiative petition, submitted by Herman Kriegshauser, to adopt an amendment to Article X of the Constitution of Missouri, relating to taxation. The summary statement you submitted is as follows:

Shall the Missouri Constitution be amended to provide a 50% tax credit for contributions or donations made by individuals and corporations to not-for-profit corporations, organizations, and foundations in addition to the deductions currently allowed for federal and state income taxes?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the resolution, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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May 9, 2007

OPINION LETTER NO. 97-2007

The Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 224
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of May 2, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Herman Kriegshauser, to adopt an amendment to Article X of the Constitution of Missouri, relating to taxation. The fiscal note summary that you submitted is as follows:

The cost to state governmental entities is estimated to exceed \$5 billion annually. The cost or savings to local governmental entities is unknown.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

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May 17, 2007

OPINION LETTER NO. 99-2007

The Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

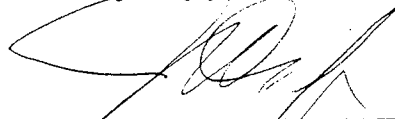
This office received your letter of May 7, 2007, submitting a summary statement prepared under Section 116.334, RSMo, for an initiative petition, submitted by Michael Mikkelsen, to amend Chapter 311, RSMo. The summary statement you submitted is as follows:

Shall Missouri law be amended to:

- lower the legal age for the manufacture, sale, supply, purchase, possession and consumption of alcohol from twenty-one years of age to eighteen years of age;
- remove the age limit to sell or handle liquor or beer; and
- revise related criminal penalties consistent with the lower legal age?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the resolution, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

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May 17, 2007

OPINION LETTER NO. 100-2007

The Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 224
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of May 7, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Michael Mikkelsen, to amend Chapter 311, RSMo, relating to changing the legal age for the sale, purchase, and possession of alcohol from 21 to 18 years. The fiscal note summary that you submitted is as follows:

This proposal would cost state and local governmental entities an estimated \$50 million in federal transportation funds, and generate an estimated \$6.91 million in state sales taxes, \$1.89 million in state excise taxes, and \$4.10 million in local sales taxes.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-8321

June 1, 2007

OPINION LETTER NO. 102-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated May 22, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Chapter 311, RSMo, relating to the sale, purchase, and possession of alcoholic beverages.

We approve the petition as to form, but note that, depending upon the governor's action on CCS HCS SCS SB 299 and SS SCS SB 616 Truly Agreed to and Finally Passed in the First Regular Session of the 94th General Assembly, the form may, at a future date, fail to meet the requirement of Section 116.050, RSMo, that it "[i]nclude all sections of existing law . . . which would be repealed by the measure."

Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", is written over a large, stylized, handwritten "X" or "J" mark.

JEREMIAH W. (JAY) NIXON
Attorney General



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June 12, 2007

OPINION LETTER NO. 105-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of June 7, 2007, submitting a summary statement prepared under Section 116.334, RSMo, for an initiative petition, submitted by Michael Mikkelsen (third submittal), to amend Chapter 311, RSMo. The summary statement you submitted is as follows:

Shall Missouri law be amended to:

- lower the legal age to manufacture, sell, dispense, supply, purchase, possess and consume alcohol from twenty-one years of age to eighteen years of age; and
- revise related criminal penalties consistent with the lower legal age?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the resolution, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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June 12, 2007

OPINION LETTER NO. 107-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 224
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of June 11, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Michael Mikkelsen (third submittal), to amend Chapter 311, RSMo, relating to liquor control law. The fiscal note summary that you submitted is as follows:

This proposal would cost state and local governmental entities an estimated \$50 million in federal transportation funds, and generate an estimated \$6.91 million in state sales taxes, \$1.89 million in state excise taxes, and \$4.10 million in local sales taxes.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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June 20, 2007

OPINION LETTER NO. 110-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated June 15, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article I of the Constitution of Missouri relating to civil rights.

We approve the petition as to form. But Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over a large, stylized, light-colored circular mark.

JEREMIAH W. (JAY) NIXON
Attorney General



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June 25, 2007

OPINION LETTER NO. 111-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 224
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of June 20, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for House Joint Resolution No. 7, a constitutional amendment relating to English as the official state language. The fiscal note summary that you submitted is as follows:

It is estimated this proposal will have no costs or savings to state or local governmental entities.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the resolution or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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July 5, 2007

OPINION LETTER NO. 113-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

You have submitted a proposed summary statement prepared under Section 116.160, RSMo, for House Joint Resolution No. 7. The proposed summary statement is as follows:

Shall the Missouri Constitution be amended to add a statement that English shall be the language of all governmental meetings at which any public business is discussed, decided, or public policy is formulated whether conducted in person or by communication equipment including conference calls, video conferences, or Internet chat or message board?

Pursuant to Section 116.160, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the House Joint Resolution, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a large, stylized circular flourish.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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July 5, 2007

OPINION LETTER NO. 114-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

You have submitted a revised proposed fair ballot language statement with respect to House Joint Resolution No. 7, relating to English as the official state language. The fair ballot language statement, prepared pursuant to Section 116.025, RSMo, is as follows:

A "yes" vote will amend the Missouri Constitution to add a statement that English shall be the language of all governmental meetings at which any public business is discussed, decided, or public policy is formulated. This includes meetings conducted in person or by other means of communication including conference calls, video conference, Internet chat, or Internet message board.

A "no" vote will not amend the Missouri Constitution to add a statement that English shall be the language of all governmental meetings at which any public business is discussed, decided, or public policy is formulated.

This proposition will have no impact on taxes.

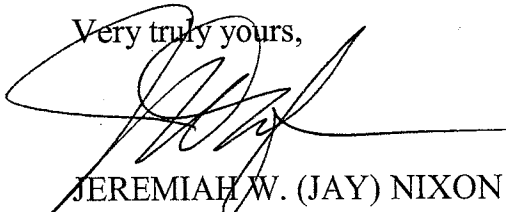
Pursuant to Section 116.025, we approve the legal content and form of the proposed fair ballot language statement.

Honorable Robin Carnahan

Page 2

Because our review of the fair ballot language statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the House Joint Resolution, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



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July 11, 2007

OPINION LETTER NO. 117-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of July 2, 2007, submitting a summary statement prepared under Section 116.334, RSMo, for an initiative petition, submitted by Tim Asher relating to amending Article I, Section 34 of the Missouri Constitution. The summary statement you submitted is as follows:

Shall the Missouri Constitution be amended to:

- ban affirmative action programs designed to eliminate discrimination against, and improve opportunities for, women and minorities in public contracting, employment and education; and
- allow preferential treatment based on race, sex, color, ethnicity, or national origin to meet federal program funds eligibility standards as well as preferential treatment for bona fide qualifications based on sex?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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July 13, 2007

OPINION LETTER NO. 118-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol Building, Room 121
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of July 5, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Tim Asher and the Missouri Civil Rights Initiative regarding a proposed constitutional amendment to Article I, Section 34. The fiscal note summary that you submitted is as follows:

The total cost or savings to state and local governmental entities is unknown. Most state governmental entities estimate no costs or savings, however, costs or savings related to future contracts are unknown. Some local governments estimate no costs or savings, but prohibition of certain municipal policies may result in unknown costs.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A large, stylized handwritten signature of Jeremiah W. (Jay) Nixon in black ink, written over the typed name and title.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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July 18, 2007

OPINION LETTER NO. 122-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated July 13, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Section 3, Article VIII of the Missouri Constitution, relating to the use of paper ballots.

We approve the petition as to form, but Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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August 7, 2007

OPINION LETTER NO. 126-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated July 31, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Section 3, Article VIII of the Missouri Constitution, relating to the use of paper ballots (second submittal).

We approve the petition as to form, but Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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August 22, 2007

OPINION LETTER NO. 127-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of August 15, 2007, submitting a summary statement prepared under Section 116.334, RSMo, for an initiative petition, submitted by Phil Lindsey relating to amending Article VIII, Section 3 of the Missouri Constitution. The summary statement you submitted is as follows:

Shall the Missouri Constitution be amended to:

- require all elections after January 1, 2009, be conducted using hand-marked, serially numbered paper ballots;
- cap the number of registered voters per precinct at 600;
- require absentee ballots received by the U.S. Postal Service to be delivered to the correct precinct and deposited in the ballot box prior to the polls closing;
- require all ballots, including absentees, to be counted and results posted before such ballots are removed from the precinct; and
- mandate original ballots to be permanently retained and available for any interested parties' inspection and copying?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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August 24, 2007

OPINION LETTER NO. 129-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 121
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of August 20, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Phil Lindsey and "Show Me The Vote!!" regarding a proposed constitutional amendment to Article VIII, Section 3. The fiscal note summary that you submitted is as follows:

Most state governmental entities estimate no costs or savings, however, state costs related to special elections are unknown. Annual costs for local governments are estimated to exceed \$15,000,000 with additional unknown costs for permanent ballot storage. One-time costs for some local governments may be significant.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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September 13, 2007

OPINION LETTER NO. 133-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated September 5, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article III of the Missouri Constitution.

We approve the petition as to form, but Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", is written over a large, stylized, and somewhat abstract signature graphic.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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P.O. Box 899
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October 5, 2007

OPINION LETTER NO. 134-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 121
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of September 25, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition, submitted by Lori Buffa regarding a proposed constitutional amendment to Article III, Section 38(e). The fiscal note summary that you submitted is as follows:

This proposal could have a significant negative fiscal impact on state and local governmental entities due to its prohibition of certain research activities. However, the total costs to state and local governmental entities are unknown.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General



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October 5, 2007

OPINION LETTER NO. 135-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of October 5, 2007, submitting a revised summary statement prepared under Section 116.334, RSMo, for an initiative petition, submitted by Dr. Lori Buffa relating to amending Article III of the Missouri Constitution by adding one new section, Section 38(e). The summary statement you submitted is as follows:

Shall the Missouri Constitution be amended to repeal the current ban on human cloning or attempted cloning and to limit Missouri patients' access to stem cell research, therapies and cures approved by voters in November 2006 by:

- redefining the ban on human cloning or attempted cloning to criminalize and impose civil penalties for some currently allowed research, therapies and cures; and
- prohibiting hospitals or other institutions from using public funds to conduct such research?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General



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October 12, 2007

OPINION LETTER NO. 138-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated October 10, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition, submitted by Theodis Brown, pertaining to the Missouri Division of Fire Safety.

We conclude that the petition must be rejected for the following reasons:

1. The petition neither contains, nor is it attached to, a full and correct text of a proposed statutory or constitutional measure as required under Section 115.050, RSMo 2000.
2. The petition contains a ballot title other than an official ballot title prepared by the Secretary of State pursuant to the provisions of Section 115.180, RSMo 2000.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist. Pursuant to Section 116.332.3, RSMo, the Secretary of State is authorized to review this opinion and "make a final decision as to the approval or rejection of the form of the petition."

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General



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November 2, 2007

OPINION LETTER NO. 139-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated October 24, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Title XXXVI of the Revised Statutes of Missouri.

We conclude that the petition must be rejected because the petition form fails to specify whether it proposes a law or a constitutional amendment under Section 116.040, RSMo 2000. Article III, Section 50 of the Missouri Constitution specifies differing signature requirements for proposed laws and constitutional amendments, therefore, an ambiguity in the form creates the potential for a violation of the constitution in the signature verification process.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist. Pursuant to Section 116.332.3, RSMo, the Secretary of State is authorized to review this opinion and "make a final decision as to the approval or rejection of the form of the petition."

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

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November 15, 2007

OPINION LETTER NO. 142-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated November 6, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Title XXXVI of the Revised Statutes of Missouri (second submittal).

We approve the petition as to form, but Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", is written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



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November 29, 2007

OPINION LETTER NO. 143-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This opinion letter responds to your request dated November 21, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Chapter 208, RSMo.

We approve the petition as to form, but Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 6, 2007

OPINION LETTER NO. 144-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 121
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of November 26, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition submitted by the Elliot Institute regarding a proposed new chapter to Title XXXVI of the Missouri Revised Statutes. The fiscal note summary that you submitted is as follows:

It is estimated this proposal will have no costs or savings to state or local governmental entities.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-8321

December 6, 2007

OPINION LETTER NO. 146-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of November 29, 2007, submitting a proposed summary statement prepared under Section 116.334, RSMo, for the petition submitted by Elliot Institute on November 6, 2007. The proposed summary statement is as follows:

Shall Missouri law be amended to:

- make it illegal for a doctor to provide a woman with an abortion at any time during her pregnancy unless the doctor determines, either immediately or after extensive and documented emotional, psychological, physical, situational, and demographic evaluations, that the procedure is necessary to prevent imminent death or serious medical risks; and
- make it illegal for any person or entity to provide any drug, medical advice, or assistance for a woman to terminate her own pregnancy and subject them to a minimum fine of \$800,000 plus attorney's fees, regardless of any proof of injury?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 14, 2007

OPINION LETTER NO. 149-2007

Honorable Susan Montee
Missouri State Auditor
State Capitol, Room 121
Jefferson City, MO 65101

Dear Auditor Montee:

This office received your letter of December 11, 2007, submitting a fiscal note and fiscal note summary prepared under Section 116.175, RSMo, for an initiative petition submitted by the Robin Acree amending Chapter 208 of the Missouri Revised Statutes. The fiscal note summary that you submitted is as follows:

The exact cost of this proposal to state governmental entities is unknown, but not less than an estimated \$255 million annually. It is estimated the proposal would have little or no costs or savings to local governmental entities.

Under Section 116.175, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 18, 2007

OPINION LETTER NO. 152-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan:

This office received your letter of December 14, 2007, submitting a proposed summary statement prepared under Section 116.334, RSMo, for the petition submitted by Robin Acree on November 20, 2007. The proposed summary statement is as follows:

Shall Missouri statutes be amended to:

- reinstate and provide health care for eligible low income Missouri families, children, elderly, and disabled based, at a minimum, on the level of services and eligibility criteria that were in effect on January 10, 2005;
- provide health care for Missourians who are paid no more than minimum wage, households whose income does not exceed two hundred percent of the federal poverty level, and persons with disabilities who are employed in sheltered workshops; and
- pay health care providers at a level no less than that set for Medicare reimbursement for such services?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Because our review of the statement is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

January 3, 2008

OPINION LETTER NO. 154-2007

Honorable Robin Carnahan
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

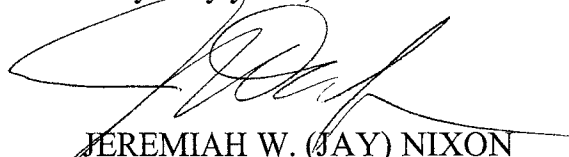
Dear Secretary Carnahan:

This opinion letter responds to your request dated December 26, 2007, for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend various chapters of the Missouri Revised Statutes of Missouri.

We approve the petition as to form, but Section 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General